V.C. JACOB v. ATTORNEY-GENERAL

[O.C.J. (Wee Chong Jin C.J.) July 1, 1970]

[Singapore — Suit No. 382 of 1969]

Constitutional Law — Public service — Disciplinary action — Dismissal of public servant — Inquiry held under Public Service (Disciplinary Proceedings) Regulations, 1962 — Report to Public Service Commission — Commission advising Head of State to dismiss and subsequent approval — Decision not implemented — Revocation of 1962 Regulations —Whether dismissal subsequent to revocation of Regulations valid — Constitution of Malaysia art. 135(2) — Constitution of Singapore art. 75.

Administrative Law — Disciplinary proceedings — Natural justice.

The plaintiff, a senior cleansing inspector, was dismissed from the public service on September 27, 1965. His dismissal was the final act in a disciplinary action first initiated in June 1963 alleging "(a) that you did commit an act amounting to neglect of duty in that you failed to prepare a duty roster for the months commencing from March, 1962 to February, 1963, for your subordinate officers, *viz.* ...(b) that you did commit acts amounting to neglect of duty by failing to supervise the work of your subordinate officers, *viz.* ... on Sundays and public holidays as set out hereunder:— ...(c) that you did commit acts amounting to neglect of duty by failing to inform your superior officer, *viz.*, the Health Officer (Katong), that your subordinate officers, ... had ceased to work on Sundays and public holidays as set out hereunder:— ...(d) that you have commited misconduct, to *wit*, gross insubordination in that you not only failed to carry out instructions given to you by your superior officer, *viz.*, the Health Officer, but you also instigated your subordinate officers, *viz.* ... to commit neglect of duty and you have thereby acted to the prejudice of discipline and proper administration of the cleansing department, Ministry of Health, Singapore." He was requested to state in writing on or before July 4, 1963, the grounds upon which he relied to exculpate himself on the alleged charges. A committee was appointed by the Public Service Commission to inquire into the matter. The plaintiff was notified to appear to give evidence in person. The plaintiff's application to the committee for permission to be represented by an advocate and solicitor was refused. His application for representation by an officer of the public service was also refused. The committee conducted the entire proceedings without the assistance of any one acting on behalf of the Government or of the plaintiff.

Subsequently the committee in accordance with the Public Service (Disciplinary Proceeding) Regulation, 1962, submitted its report to the Public Service Commission. This report stated that the committee was of the opinion that charges (a), (b) & (c) were well founded but there was no evidence to support charge (d). The Public Service Commission acting in accordance with the 1962 Regulations advised the Yang di-Pertuan Negara to dismiss the plaintiff from the public service. The advise was approved by the Yang di-Pertuan Negara and it was decided to dismiss the plaintiff, but for reasons which had not been disclosed to the court, that decision was not implemented and was never communicated to the plaintiff up to the time when the 1962 Regulations were revoked and replaced by the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964.

The question to be decided was whether or not the plaintiff had been validly dismissed. The plaintiff claimed that "his purported dismissal by the Public Service Commission was illegal, *ultra vires* and invalid on the following grounds:— (i) the Public Service Commission had no power to dismiss the plaintiff under the said Rules since the commission's power in relation to the said disciplinary proceedings had been exhausted by reason of action taken under the said Regulations, (ii) there was no basis upon which any reasonable person or body of persons could come to the conclusion that the plaintiff was guilty of the allegations made against him, (iii) the said committee acted in violation of article 135(2) of the Malaysia Constitution, (iv) in any event the Public Service Commission had no power either under the Constitution or under any other written law to dismiss to plaintiff."

Held: (1) the High Court in the exercise of its supervisory jurisdiction over inferior tribunals would not interfere merely on the ground of insufficiency of evidence;

(2) a right to question the witnesses brought against a man is not required by natural justice and the principles or rules or requirements of natural justice are, apart from impartiality, those elementary and essential principles of fairness contained in the passages from *De Verteuil* v. *Knaggs*(4) and *Byrne* v. *Kinematograph Renters Society Ltd.*(5) Therefore in this case the committee of inquiry had not denied the plaintiff a reasonable opportunity of being heard merely because it had refused the plaintiff's request to be represented before it by an advocate and solicitor;

(3)(i) having regard to the letter of dismissal dated September 27, 1965, the Public Service Commission had acted under r. 4(14)(a) of the 1964 Rules and was entitled to so act by virtue of r. 14, the whole purpose of and the proper interpretation of the latter rule being to enable disciplinary proceedings commenced under the 1962 Regulations but not completed before the 1964 Rules came into force to be lawfully continued to a conclusion under the 1964 Rules without the necessity for fresh disciplinary proceedings having to be commenced: (ii) the Public Service Commission is, under the Constitution of Singapore, an independent authority, independent of executive control, and article 75(1) of the Constitution confers on the Public Service Commission the power to appoint and to exercise disciplinary control over public officers. A power to appoint must necessarily imply a power to dismiss unless the power of dismissal is expressly vested in some other person or authority. A power to exercise disciplinary control enables that power to be exercised in the form of dismissal, unless the power of dismissal is expressly vested in some other person or authority.

Cases referred to:-

(1) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 W.L.R. 163.

(2) *Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [1962] M.L.J. 169, P.C.

(3) *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631 P.C.

(4) *De Verteuil* v. *Knaggs*, [1918] A.C. 179.

(5) *Byrne* v. *Kinematograph Renters Society Ltd.* [1958] 2 All E.R. 579; [1958] 1 W.L.R. 762.

(6) *Pett* v. *Greyhound Racing Association Ltd.* [1968] 2 All E.R. 545.

(7) *Pett* v. *Greyhound Racing Association (No. 2)* [1969] 2 All E.R. 221.

(8) *Khem Chand* v. *Union of India* A.I.R. 1958 S.C. 300.

CIVIL SUIT.

Ho Thian Cheh for the plaintiff.

Mrs. R. Polack and *Woo Tchi Chu* (State Counsel) for the defendant.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The facts in this case are not in dispute. The plaintiff entered the service of the Government of Singapore on the 20th December, 1940. He was appointed a senior cleansing inspector on the 1st January 1957, a post which he held until he was dismissed on the 27th September 1965. The letter of dismissal dated 27th September 1965, signed by the Permanent Secretary (Health), was in the following terms: —

"Sir,

I refer to my letter No. M. of H.Cf.013/63 of 26.6.63 informing you that your dismissal from the service is being considered on the charges set out in the above letter and

requesting you to state any grounds upon which you rely to exculpate yourself on the charges.

2. I am directed to inform you that the Public Service Commission after consideration of your reply to the charges and of the Report of the Committee of Inquiry appointed in accordance with the provisions of the Public Service (Disciplinary Proceedings) Regulations, 1962, has decided that you be dismissed from the service as from the 27th day of September, 1965.

3. You are hereby dismissed the service as from the said date and are not entitled to any salary as from that date.

4. Please acknowledge receipt of this letter on the duplicate copy attached.

I have the honour to be,
Sir,
Your obedient servant,
Signed."

The plaintiff's dismissal was the final act in disciplinary action first initiated on the 26th June 1963 by a letter from the same Permanent Secretary (Health) the relevant portions of which are as follows: —

"Sir,

I am directed to inform you that consideration is being given to the question of your dismissal from the service on the following grounds: —

(a) That you did commit an act amounting to neglect of duty in that you failed to prepare a Duty Roster for the months commencing from March, 1962 to February, 1963, for your subordinate officers, *viz.*...

(b) That you did commit acts amounting to neglect of duty by failing to supervise the work of your subordinate officers, *viz.* ...on Sundays and Public Holidays as set out hereunder: — ...

(c) That you did commit acts amounting to neglect of duty by failing to inform your superior officer, *viz.*, the Health Officer (Katong), that your subordinate officers, Messrs. ... had ceased to work on Sundays and Public Holidays as set out hereunder: — ...

(d) That you have committed misconduct, to *wit*, gross insubordination in that you not only failed to carry out instructions given to you by your superior officer, *viz.*, the Health Officer, but you also instigated your subordinate officers, *viz.* ...to commit neglect of duty and you have thereby acted to the prejudice of discipline and proper administration of the Cleansing Department, Ministry of Health, Singapore.

2. I am to request you to state in writing on or before 4th July, 1963, any grounds upon which you rely to exculpate yourself on the charges referred to above."

The plaintiff submitted his exculpatory statement denying the allegations contained in the said letter which however was of no avail, as on the 25th October 1963 he was informed by letter that a committee had been appointed by the Public Service Commission under regulation 4(3) of the Public Service (Disciplinary Proceedings) Regulations, 1962, to inquire into the matter. That letter, which was signed by the chairman of the committee so appointed, stated that the "question of your dismissal will be brought before the committee on Monday, 4th November 1963, at the sitting of the committee to be held at the conference room, Ministry of Health, Palmer Road, at 2.15 p.m.". The plaintiff was also notified by that letter to appear on that date to give evidence in person and to give notice to the chairman, at an early date, of the names of witnesses, if any, whom he may wish to be called on his behalf.

The first sitting of the committee of inquiry was however not held until 3rd February 1964 and it sat on 16 occasions, the last of which was on 26th February 1964. It also held two "preliminary meetings" before commencing its sittings. The plaintiff applied to the committee for permission to be represented by an advocate and solicitor. When this application was refused, he applied for permission to be represented by an officer in the public service and this too was refused.

It is common ground that the committee of inquiry conducted the entire proceedings without the assistance of any one acting on behalf of the Government or of the plaintiff and the notes recorded by the chairman of the evidence of the witnesses called and of the statements of the plaintiff at the inquiry were a full and accurate record of the evidence and statements. In all, the committee called and examined seventeen witnesses, all of them officers in the public service.

Subsequently the committee, in accordance with the Public Service (Disciplinary Proceedings) Regulations, 1962 (hereinafter referred to as "the 1962 Regulations"), submitted its report to the Public Service Commission. This report is in the agreed bundle of documents and in it the committee stated that in its opinion charges (a), (b) and (c) were well-founded but that there was no evidence to support charge (d). The Public Service Commission, acting in accordance with the 1962 Regulations, advised the Yang di-Pertuan Negara (the Head of State of the then State of Singapore) to dismiss the plaintiff from the public service. The advice of the Public Service Commission was approved by the Yang di-Pertuan Negara on 10th June 1964.

In effect the Yang di-Pertuan Negara decided to dismiss the plaintiff but, for reasons which have not been disclosed to the court, this decision was not implemented and was never communicated to the plaintiff up to the time when the 1962 Regulations were revoked and replaced by the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 (hereinafter referred to as "the 1964 Rules"). The plaintiff, in the meantime, continued working and was permitted to work on the basis that he was an officer in the public service.

It is convenient at this juncture to note that the 1962 Regulations were made by the Yang di-Pertuan Negara on 17th September 1962 in exercise of the powers conferred on him by section 86(2) of the Singapore (Constitution) Order in Council 1958. The 1958 Singapore Constitution was revoked and replaced by the Sabah, Sarawak and Singapore (State Constitutions) Order in Council 1963. This 1963 Singapore Constitution came into operation, by virtue of article 94, immediately before Malaysia Day *i.e.* 16th September 1963. However, by virtue of article 105 the 1962 Regulations continued in force "with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution and the Malaysia Act" until they were revoked by the 1964 Rules which were made on 22nd October 1964 by the Public Service Commission in exercise of the powers conferred by article 80(2) of the 1963 Singapore Constitution.

It is clear, therefore, that although a decision, valid under the 1962 Regulations, had been arrived at to dismiss the plaintiff, it had not been implemented and was unknown to the plaintiff when the 1962 Regulations were revoked and replaced by the 1964 Rules in October 1964. He was dismissed on 27th September 1965 by a letter the full terms of which appear earlier in this judgment.

The question I have to decide is whether or not the plaintiff had been validly dismissed. In the statement of claim as finally amended he claims that "his purported dismissal by the Public Service Commission was illegal, *ultra vires* and invalid on the following grounds: —

i) The Public Service Commission had no power to dismiss the plaintiff under the said Rules since the commission's power in relation to the said disciplinary proceedings had been exhausted by reason of action taken under the said Regulations.

ii) There was no basis upon which any reasonable person or body of persons could come to the conclusion that the plaintiff was guilty of the allegations made against him.

iii) The said committee acted in violation of article 135(2) of the Malaysia Constitution.

iv) In any event the Public Service Commission had no power either under the Constitution or under any other written law to dismiss the plaintiff.

First, I will deal with the second ground. The plaintiff contends that even if the Public Service Commission had power to dismiss him there was no basis upon which any reasonable person or body of persons could come to the conclusion that he was guilty of the allegations made against him because there was no sufficient evidence to warrant that conclusion and this court, in the exercise of its supervisory jurisdiction, ought to interfere. I cannot accept that contention for it has been said on many occasions by the courts in England — and the law on this point is the same here as in England — that the High Court in the exercise of its supervisory jurisdiction over inferior tribunals will not interfere merely on the ground of insufficiency of evidence. I need only refer to the most recent authority which is the House of Lords' case of *Anisminic Ltd.* v. *Foreign Compensation Commission*[1] and I need cite only one passage from the judgment of Lord Pearce at page 192:

"The courts have, however, always been careful to distinguish their intervention whether on excess of jurisdiction or error of law from an appellate function. Their jurisdiction over inferior tribunals is supervision, not review.

'That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise.'

It is simply an enforcement of Parliament's mandate to the tribunal. If the tribunal is intended on a true construction of the Act to inquire into and finally decide questions within a certain area, the courts' supervisory duty is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong. They will intervene if the tribunal asks itself the wrong question (that is, questions other than those which Parliament directed it to ask itself). But if it directs itself to the right inquiry, asking the right questions, they will not intervene merely because it has or may have come to the wrong answer, provided that this is an answer that lies within its jurisdiction."

Next, I will deal with the third ground. The plaintiff contends that the committee of inquiry failed to comply with the provisions of article 135(2) of the Constitution of Malaysia, because he was denied the right to be represented before the committee by an advocate and solicitor, the right to give evidence in his defence and the right to make representations on the penalty proposed to be imposed on him. Article 135 of the Constitution of Malaysia provides as follows: —

"(1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

(3) ....."

Article 135(2) has been considered by the Privy Council in the case of *Surinder Singh Kanda* v. *The Government of the Federation of Malaya*[2]. In that case the Board said that the right to be heard is one of the two rules which are the essential characteristics of natural justice, the other rule being the rule against bias and refers to the right to be heard as being the same as the concept of fairness. A year or two earlier, the Privy Council also had occasion to consider the application of the rules of natural justice in the case of *University of Ceylon* v. *Fernando*.[3] In that case a main ground of objection to the decision of the court of inquiry, set up by the Vice-Chancellor of the University of Ceylon, as a domestic tribunal to investigate an allegation that the respondent student had cheated in an examination, was that the respondent was not given an opportunity to question the "essential witness" against him. The Board rejected the contention that the failure to give the respondent such an opportunity was a breach of the rules of natural justice. In the course of their advice the Board, after reviewing at length the authorities, said:

"From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in *De Verteuil* v. *Knaggs*. 'Their Lordships are of the opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.'

The last general statement as to the requirements of natural justice which their Lordships would refer is that of Harman J. in *Byrne* v. *Kinematograph Renters Society Ltd.* of which their Lordships would express their approval. The learned judge said this: 'What then are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think there really is anything more.'"

Later on in their opinion the Board said the Vice-Chancellor's procedure, in the absence of any express requirement, need only be such as "to comply with those elementary and essential principles of 'fairness' which must, as a matter of necessary implication, be treated as applicable in the discharge of the Vice-Chancellor's admittedly quasi-judicial functions or, in other words, with the principles of natural justice."

This court is bound to follow a decision of the Privy Council and if the Privy Council has decided that a right to question the witnesses brought against a man is not required by natural justice and that the principles or rules or requirements of natural justice are, apart from impartiality, those elementary and essential principles of fairness as contained in the passages from *De Verteuil* v. *Knaggs*[4] and *Byrne* v. *Kinematograph Renters Society Ltd.*,[5] I am bound to decide that the committee of inquiry has not denied the plaintiff a reasonable opportunity of being heard merely because it has refused the plaintiff's request to be represented before it by an advocate and solicitor.

In so deciding I have considered the decision of the English Court of Appeal on an appeal from the grant of an interlocutory injunction in *Pett* v. *Greyhound Racing Association, Ltd.*[6] to the effect that natural justice requires either because of the common law right to representation or independently of it, that, in matters which affect a man's reputation or livelihood or any matters of serious import, he can be defended, if he wishes, by counsel or solicitor.

Like Lyell J. in *Pett* v. *Greyhound Racing Association (No. 2)*[7] I find the two authorities, the Privy Council case and the English Court of Appeal case, are irreconcilable and like Lyell J. I prefer the view of the Privy Council.

The second argument relied on by the plaintiff in relation to article 135(2) is that he was denied the right to give evidence in his defence. The agreed bundle of documents before me which includes a full record of the evidence and statements which were before the committee of inquiry conclusively, in my judgment, disposes of this allegation.

The third and last argument relied on in relation to article 135(2) is that he was denied the right to make representations before the committee of inquiry on the penalty proposed to be imposed on him. Reliance is placed on a passage at page 61 of *Basu's* Commentary on the Constitution of India, 4th ed. Vol. 5 which runs thus:

"Under Cl.(2) as it stood prior to the Constitution (Fifteenth Amendment) Act, 1963, it was settled that in cases where Art. 311(2) was attracted, the employee charged had the right to reasonable opportunity to show cause twice, before the order of dismissal, etc., is passed."

The Supreme Court of India in *Khem Chand* v. *Union of India*[8] so decided. Article 311(2) of the Indian Constitution prior to 1963 is, however, different from our article 135(2) and is in the following terms: —

"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

The Indian article 311(2) is thus different from the Malaysian article 135(2). In Malaysia the right given is "a reasonable opportunity to be heard" whereas in India the right given is "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." On the wording of the Indian Constitution I would, respectfully, agree with the decision of the Indian Supreme Court in *Khem Chand's* case which would be a highly persuasive authority, and one I would adopt, if the Malaysian Article 135(2) were in similar terms.

However, the point that was taken by the plaintiff in his statement of claim as amended on the day of the hearing and that was urged before me by his counsel at the hearing, is that under article 135(2) the committee of inquiry must, *inter alia*, give the plaintiff the right to make representations as to the punishment to be imposed. The relevant facts, which are not in dispute commence from the said letter dated 26th June 1963 written by the Permanent Secretary (Health) to the plaintiff. It is to be observed that in that letter the plaintiff was informed in clear language that the question of his dismissal from the public service on grounds fully spelt out in the letter was under consideration. It is also to be observed that the chairman of the committee of inquiry informed him by letter on 25th October 1963 that the "question of your dismissal" will come up on the 4th November 1963.

In my opinion the plaintiff was left in no doubt at all that if the charges against him were proved he might suffer the extreme penalty of all, namely dismissal from the public service. It follows, in my view, that he had, at the earliest stage in the matter, been afforded the opportunity to make representations to the committee of inquiry, if he so wished, as to why he should not suffer the contemplated penalty of dismissal on the charges enumerated against him. He could have availed himself of the opportunity to be heard on the contemplated dismissal.

Lastly, it is clear from a perusal of the record of the evidence and the statements before the committee of inquiry that the plaintiff did not avail himself of the opportunity to make representations on the question of punishment and it is not alleged that there was any refusal on the part of the committee of inquiry to hear him on the question of punishment. It follows, in my judgment, on the pleadings, on the arguments put forward on behalf of the plaintiff by his counsel and on the facts that the committee of inquiry did not fail to give nor did it deny the plaintiff the right to make representations on the question of punishment.

Finally, there remains to be dealt with the first and fourth grounds why the plaintiff claims his dismissal was invalid. I propose to deal with them together as they relate to the power of dismissal by the Public Service Commission. It is contended that the Public Service Commission had no power either under the 1963 Constitution or under any other written law to dismiss the plaintiff nor did it have power under the 1964 Rules because its power in relation to the disciplinary proceedings against the plaintiff had been exhausted by reason of action taken under the 1962 Regulations.

With regard to the last of the above contentions the answer is provided by rule 14 of the 1964 Rules which is as follows: —

"Where, before the coming into operation of these Rules, any steps were taken or proceedings commenced under the provisions of the Public Service (Disciplinary Proceedings) Regulations, 1962, against a public officer for disciplinary offences, such steps or proceedings shall be deemed to be steps or proceedings taken or commenced under these Rules."

In my opinion it is clear that by virtue of rule 14 the steps taken and the proceedings commenced against the plaintiff under the 1962 Regulations must be deemed to have been taken and commenced against him under the 1964 Rules. It follows on the undisputed facts that the disciplinary proceedings against the plaintiff had on the 22nd October 1964 reached the stage where the Public Service Commission had considered the report of the committee of inquiry appointed by it and had decided that on the report the plaintiff should be dismissed from the public service. All that remained to be done was for the Public Service Commission to dismiss the plaintiff by acting under rule 4(14)(a) of the 1964 Rules which provides that the "Public Service Commission may, upon considering the report of the Committee, if it is of the opinion that the public officer should be dismissed or be reduced in rank, dismiss or reduce the rank of the public officer from such date as it may think fit;."

It seems to me, having regard to the letter of dismissal dated 27th September 1965, that the Public Service Commission had acted under rule 4(14)(a) of the 1964 Rules and was entitled to so act by virtue of rule 14, the whole purpose of and the proper interpretation of the latter rule being to enable disciplinary proceedings commenced under the 1962 Regulations but not completed before the 1964 Rules came into force to be lawfully continued to a conclusion under the 1964 Rules without the necessity for fresh disciplinary proceedings having to be commenced.

With regard to the submission that the Public Service Commission had no power under the Constitution or under any other written law to dismiss the plaintiff the argument runs thus. The 1963 Constitution does not expressly vest the power to dismiss public servants in the Public Service Commission whereas article 132(2A) of the Constitution of Malaysia which has constitutional force in Singapore after 9th August 1965 in spite of the separation of Singapore from the Federation of Malaysia impliedly vests the power of dismissal in the President of the Republic of Singapore. This article 132(2A) enacts the common law rule that all public servants hold office during the pleasure of the Crown and since it has been decided that a person who holds office during the pleasure of the Crown can be dismissed from office at will without cause assigned, therefore, a public servant can be dismissed from office by the President. This being so it can be said that by necessary implication the power of dismissal of public servants is constitutionally vested in the President.

The contrary submission on behalf of the Attorney-General is that article 75 of the 1963 Constitution read with the Interpretation and General Clauses Ordinance (Chapter 2), now replaced by the Interpretation Act 1965, vests the power of dismissal in the Public Service Commission and that the said article 132(2A) ought not to be construed to mean more than it says. All that it says and must mean is that, except as expressly provided by the Constitution, no public servant has security of tenure. It is submitted that this must be the true meaning of the said article 132(2A) as otherwise article 135(1) of the same Constitution would be meaningless as the latter article expressly declares that, *inter alia*, no member of the public service of each State in the Federation of Malaysia "shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of dismissal or reduction in rank, has power to appoint a member of that service of equal rank." It is submitted that if the President is the sole dismissing authority on the true construction of article 132(2A) then there would be no necessity to enact article 135 because there could be no authority which is not subordinate to the President.

I accept the submission put forward on behalf of the Attorney-General and it seems to me to give full weight and effect to the constitutional provisions relating to the public service. To hold otherwise would place public officers under the control of the executive for the President must, constitutionally, act in accordance with the advice of the executive. The Public Service Commission on the other hand is, under the 1963 Constitution, an independent authority, independent of executive control and as provided by article 75 of the 1963 Constitution is the authority to exercise disciplinary control over public officers. It is common ground between the parties that article 75(1) of the 1963 Constitution confers on the Public Service Commission the power to appoint and to exercise disciplinary control over public officers. In my view, apart from the Interpretation Act 1965, a power to appoint must necessarily imply a power to dismiss unless the power of dismissal is expressly vested in some other person or authority. Furthermore it is, in my opinion, clear that a power to exercise disciplinary control enables that power to be exercised in the form of dismissal, unless the power of dismissal is expressly vested in some other person or authority.

However, I must not be taken to have decided that article 132(2A) read with article 135(1) of the Malaysian Constitution and the 1963 Constitution cannot be construed to enable the President to dismiss a public officer. In my opinion the President has by virtue of article 132(2A) a residual power of dismissal, a power, however, which he must exercise, subject to article 135(2) *i.e.* the reasonable opportunity to be heard rule — so that in practice it would be a power which will hardly, if ever, be exercised at all.

For all these reasons I would dismiss the action with costs.

Action dismissed.

Solicitors: *S. K. Lee & Co.*

K.S. ROBERTS v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) July 7, 1970]

[Kuala Lumpur — Criminal Appeal No. 22 of 1970]

Penal Code, s. 292(a) — Obscene publication — Publicly exhibiting for sale an obscene book — Approved publication — Retailer — Knowledge — Strict liability.

Criminal Law and Procedure — Identification — "Proved" — Evidence Ordinance 1950, s. 3 — Test.